

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

MACA.No. 494 of 2012 ()

AGAINST THE AWARD IN OPMV 862/2000 ON THE FILE OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, MANJERI DATED 05-01-1201

APPELLANT/3RD RESPONDENT IN O.P.(MV) NO. 862/2000:

THE NATIONAL INSURANCE COMPANY LTD.
DIVISIONAL OFFICE, P.B.NO. 11, MAVOOR ROAD
CALICUT, REPRESENTED BY ITS MANAGER, REGIONAL OFFICE
M.G.ROAD, ERNAKULAM.

BY ADV. SRI.LAL GEORGE

RESPONDENTS/CLAIMANT AND RESPONDENTS 1 AND 2 IN O.P.(M.V.)
NO.862/2000:

1. AHAMMED P.R. (MINOR)
4 1/2 YEARS
REPRESENTED BY FATHER AND NATURAL GUARDIAN
P.M.RAFEEL MOHAMMED, PARAMBATHKANDY HOUSE, B.P.ANGADI
TIRUR, NOW RESIDING AT TB ROAD, MAJERI-676121.
2. HANDASAN U.N.
S/O. UNNIAMAN, UPPATH NAREPARAMBATH HOUSE
CHETTIPADI P.O., PARAPPANANGADI
MALAPPURAM DISTRICT-676319.
3. M.ABDUL BASHEER
S/O. KOMMUKUTTY HAJI, JALALIYA MANZIL, CHETTIPADI P.O.
PARAPPANANGADI, MALAPPURAM DISTRICT-676319.

R2,R3 BY ADV. SRI.BABU S. NAIR
R2,R3 BY ADV. SRI.K.RAKESH
R1 BY ADV. SRI.P.M.RAFIQ
R1 BY ADV. SRI.THOMAS J.ANACKALLUNKAL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

**T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.,**

M.A.C.A. No.494 of 2012

Dated this the 20th day of February 2015

JUDGMENT

Ramachandran Nair, J.,

This appeal is filed by the Insurance Company, mainly challenging the quantum of compensation.

2. This is the second time that the matter has reached before this Court. The claimant/respondent in this appeal was involved in the accident, while he was a minor aged 4½ years. For the personal injury sustained by him claim for compensation has been made. The accident occurred on 20.1.2000. For the purpose of disposing of this appeal various other details are not necessary. Learned counsel for the appellant Insurance Company submitted that an amount of Rs. 16,59,175/- has been awarded by the Tribunal as treatment expenses. Mainly they include bills for Ayurvedic treatment and medicines. It is submitted that the same have been produced as Ext.A5 series. Nobody has been examined to support the bills, explain the treatment and the details of the expenditure.

3. It is also submitted that the documents have not been properly proved. The Learned counsel for the respondent submitted that the Tribunal has noted in the judgment that none of the bills

have been objected. Total compensation awarded is Rs. 19,09,975/-.

The respondent is represented by his father in the proceedings.

4. We have gone through the series of bills produced by the claimants. Learned counsel for the respondent explained that because of the injury sustained, the life of the boy has been crippled, both physically and mentally which fact has been recorded by the Tribunal.

5. According to the learned counsel, he is even unable to stand on his own because of the injury to the spine, he is unable to speak and the injury to the brain has also caused severe hardships to him to lead his personal life and to pursue education. It is submitted therefore, that the treatment had to be continued from time to time and various treatments under the Ayurvedic system have been extended to him. Therefore, it is not a case where false bills were produced; what are produced are the actual bills issued by the nursing home itself. The treatment is continuing even thereafter till date.

6. On an earlier occasion in the appeal filed by the respondent as M.A.CA. 1875/05 a Division Bench of this Court remanded the matter for fresh consideration, in the light of the plea made by the learned counsel for the respondent herein (appellant therein) by judgment dated 17.8.2011. The judgment will show that an amount of Rs.1,86,308/- was the compensation allowed by the Tribunal on

the first occasion. In Paragraph 3 of the judgment will show that a submission was made that the disability is to the extent of 60% and in the light of the fact that treatment is continuing, the respondent may be given an opportunity to adduce further evidence in support of his claim. Thereafter, the matter was considered by the Tribunal. We have also noticed that the Tribunal had occasion to see the child and observations have also been made about the state of health of the child also.

7. Of course, each and every expenses have not been explained orally on the respondent's behalf before the Tribunal. We find that certain bills for Rs. 2 lakhs and above each have been marked in evidence. It is only proper that the respondent's father explain various aspects and he can also adduce evidence of a responsible person from the Nursing Home in which the treatment is being undertaken and a treatment summary also will be made available before the Tribunal.

8. Therefore, fresh evidence is required in this matter. Normally this Court would not have remanded the matter on a second time, but since we find that various aspects have to be explained, on behalf of the respondent it is only proper the matter is again considered by the Tribunal. Therefore, we set aside the award passed by the Tribunal.

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9. We are informed by the learned counsel for the appellant that pursuant to the interim order passed this court, Rs.3 lakhs including interest (approximately Rs. 4,90,000/-) have been deposited. We permit the 1st respondent to withdraw the said amount and the amount can be utilised by the father of the 1st respondent for meeting the medical expenses.

The parties will appear before the Tribunal on 16.3.2015. The records will be transmitted immediately. No costs.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

Sd/-

**P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge

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